Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1957

No. 504

GERTRUDE MACDONALD

v.

LA SALLE NATIONAL BANK, Conservator

Appeal from the Supreme Court of Illinois

Answer to Motion to Dismiss or Affirm

GERTRUDE MACDONALD, pro se
1462 Ridge Avenue
Evanston, Illinois

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Now comes Gertrude Macdonald, appellant, in answer to the Motion to Dismiss or Affirm and says,

1. The La Salle National Bank, either individually or as conservator, is prohibited by State and Federal laws from using either bank funds or appellant's funds to oppose the appellant's personal interest in the case at bar and, in so doing, is acting beyond the scope of it's authority.

2. The La Salle National Bank cannot properly interject itself in a suit upon a cause of action in which it has no interest.

The appellant is seeking relief from a judgment of the Supreme Court of Illinois affirming the order of the Circuit Court of Cook County, Illinois which found her to be an incompetent person and incapable of managing and caring for her estate for mental reasons. (Jurisdictional Statement, on page 17).

The La Salle National Bank can present no law or doctrine under which it can claim a right to oppose the appellant's contention that this judgment illegally restrains her of her liberty, when such restraint is in violation of the Constitution of the United States.

STATEMENT.

On October 29, 1957, certified and exemplified documents were filed in this case from the Probate Court of Cook County, Illinois, and affidavits, etc. which for convenience, will be described and numbered as follows:

EXHIBIT I. Motion of Gertrude Macdonald, to Dismiss the Petition of the La Salle National Bank to Oppose Appellant in the Probate Court because of possible "De Son Tort" Liability to the bank, individually.

EXHIBIT II. "Petition to Vacate and Set Aside Appointments of Conservators of the Person and Estate of Gertrude Macdonald, which Appointments Were Made Without Service of Process on Gertrude Macdonald, Without Giving Her an Opportunity to Be Heard, and Through the Perpetration of a Fraud Upon Gertrude Macdonald and Upon the Probate Court of Cook County, Illinois." (July 12, 1955).

EXHIBIT III. Order entered by the Probate Court on September 13, 1955, continuing the above-captioned petition generally and without date.

EXHIBIT IV. An AFFIDAVIT procured from Annabelle G. Hansen, which evidence substantiates the fraud perpetuated on appellant, as fully described and set forth in Exhibit II.

EXHIBIT V. Evidence showing attempts made to have the Annabelle G. Hansen AFFIDAVIT entered of record.

Because of the above exhibits being recently filed in this case at bar, new issues have been raised which the appellant believes will shed new light on the matter before this Court.

A Brief History Of Appellant's Case Follows In Narrative Form So That The Context Will Not Be Lost.

1. The appellant never knew she was deprived of her liberty on March 8, 1938 by the Probate Court of Cook County until long after her appeal time was gone and a conservator had been appointed for her estate, said judgment being final and conclusive, thereby putting her in the class of the "legally dead." (*Bradshaw* v. *Lucas*, 214 Ill. App. 218).

2. An inspection of the record showed the following:

a). The petition showed that an Annabelle G. Hansen had prosecuted a Gertrude Macdonald for incompetency as being incapable of managing and caring for her estate, without giving an address or description for the said Gertrude Macdonald. Rec. 3 (1-2).

b). On the same day summons was served on a Gertrude Macdonald, again without address, or description, as if a person would appear at the "window" of the Sheriff's office and say, "Do you have a summons to serve on me today for an incompetency proceeding?" Rec. 3 (3).

c). Three days later a jury sat and found a Gertrude McDonald, a resident of Cook County, incompetent and incapable of managing and caring for her estate. A corporate conservator was then appointed by the court. Rec. 3 (3).

3. Endless hours and thousands of dollars were spent by appellant's family to have the judgment set aside, but counsel set forth the difficulty the record presented:

a). The appellant's word now meant nothing towards setting up the truth, because of her incompetency.

b). There could not have been a jury trial without an appearance, so that if appellant could not produce the person who appeared in her place and stead, she could not collaterally attack the finding of the jury, and that such appearance cured the lack of address or description in the initial petition and summons.

4. In 1955, three events occurred which gave appellant hope for an immediate release from the illegal restraint of her liberty. They were,

First, Jean Macdonald, sister-in-law to the appellant, found the stranger who had prosecuted appellant for incompetency, one Annabelle G. Hansen who admitted all the statements as now set forth in her sworn AFFIDAVIT (Exhibit IV.) but refused to sign an AFFIDAVI fearing a possible prosecution for fraud, but welcomed an opportunity to clear her conscience if subpoened into the Probate Court, thereby resulting in the preparation of Exhibit II. Soon thereafter, appellant found counsel willing to represent her in the Probate Court, thereby resulting in the preparation of two separate petitions, one on the Law (now before this Court) and the other on the facts setting forth the fraud (Exhibit II).

Second, after all the years of "darkness", and the stigma of the proceedings against appellant, she believed soon would be eradicated *ab ihitio*. (Instead of the corporate conservator, the La Salle National Bank, insisting on such a hearing (Exhibit II.), the appellant was instead opposed by said bank and finally an order was entered continuing

the matter generally and without date (Exhibit III.) The question of Law was heard on the Amended Petition of appellant in the Probate Court and an order was entered denying and dismissing said petition. Rec. 3(15).

Third, counsel in preparing the transcript of record for an appeal, on a trial *de novo* to the Circuit Court, found a number on the service of summons (15780) which bore no relationship to the Probate File. Tracking the number down, counsel found in the warehouse files of the probate court a volume in which entries were made setting forth, among other things, "This day came the said petition by her attorney and this cause now coming on to be heard and the said Gertrude McDonald, being solemnly called in open court came not nor any one for him." Rec. 3(3) Here, for the first time in seventeen years was the proof that appellant had not appeared before a jury, but soon appellant learned that there was no way for appearances to be forced before the court because the statute did not provide for a warrant to issue and that most judgments against the people in incompetency proceedings, depriving persons of their liberty, were by default. (*Procedure for the appointment of a conservator*, used for inquisitions into lunacy, is fully set forth on page 10, La Salle National Bank's Brief).

Instant Case At Bar.

The appellant was barred from raising questions of fact, those questions having become separated when the Probate Court did not hear the petition for fraud, but continued the matter generally and without date. (Exhibits II, III.).

Had said petition been heard, the appellant undoubtedly would not be before the court now.

The appellant cannot understand the La Salle National Bank's reason, in light of it's knowledge of the above history of the case, to have emphasized that, "The statute complained of * * * clearly provided appellant with notice and an opportunity to be heard" (page 2 of Motion) and again (on page 11 of its brief), "The record shows that appellant was duly served with summons and the issues were tried by jury. Appellant does not contend otherwise, and the Supreme Court of Illinois so found in the decision appealed from."

The use of such a procedure to deprive appellant of her liberty, *i.e.* Chapter 86, Sections 1, 2, and 53 and its continued use today under Sections 113 (c)-117 of Chapter 3 of the Illinois Revised Statutes did result in the final showing of a terrible fraud against appellant, but what can be said for those persons deprived of their liberty by the use of the same procedure who have not had a family to help them out? Can we be sure that their presumption of sanity was carefully safeguarded, in its destruction when the statute complained of provides for no medical examination, no warrant to enforce their appearance at their own trial, no protection to the public or to themselves as to their health, safety and welfare by the Public Welfare Department?

The appellant deeply believes that basic fundamental rights belonging to all citizens are being violated, but hesitates, in appearing before this court, *pro se*, to enlarge the federal question but will leave it to this court to decide.

If it please the Court to take Judicial Notice of the fact that since June 21, 1893 the authority to commit mentally ill persons to private institutions has been confined to the

county courts exclusively under the strict, constitutionally safeguarded provisions of Chapter 85, since repealed and now under like provisions of Chapter 91½ of the Illinois Revised Statutes (on pages 9 and 10 of Jurisdictional Statement).

On Thursday, August 16, 1956 and subsequently there appeared in the Chicago Daily Law Bulletin the following Announcement by the Probate Court of Cook County, Illinois:

> "ATTENTION ALL ATTORNEYS
>
> *In re*: Petition for appointment of conservator *wherein no prior adjudication has been had in the County Court of Cook County, or in any other court of competent jurisdiction*
>
> The clerk of the Probate court of Cook County has for the use of attorneys a form of 'Physicians Affidavit' required under section 113(c) of the Probate act, *to be used where no prior adjudication has been had* The affidavit shall contain the mental and physical findings of the physician and shall be sworn to before a notary public or any other duly authorized officer authorized to administer oaths.
>
> This affidavit shall be fully executed and filed with the petition on the date of hearing thereon in open court."

Nowhere, under Section 113(c) or in any other part of Art. X entitled, "Conservators" of Chapter 3 of the Illinois Revised Statutes referred to in the above announcement, did the Illinois General Assembly make any provision requiring the use of a Physician's Affidavit for any purpose whatsoever in the Probate court of Cook County, Illinois, and the "Physician's Affidavit" provides for commitment to a private institution.

CONCLUSION.

It is respectfully submitted that the Motion of the La Salle National Bank be denied and that this Honorable Court should take jurisdiction of this appeal for the reasons stated above, since Gertrude Macdonald was deprived of her liberty contrary to "due process of law" as guaranteed to her by the Fourteenth Amendment to the Constitution of the United States and the federal question herein involved is substantial.

Respectfully submitted,

GERTRUDE MACDONALD, *Pro se.*

State of Illinois }
County of Cook } ss.

Gertrude Macdonald, being duly sworn, deposeth and says that the foregoing Facts and Statements by her subscribed, are true to her best knowledge and belief.

.....

1462 Ridge Avenue, Evanston, Illinois

Subscribed and Sworn to before me,
this ..... day of November, A.D., 1957

.....

Notary Public

My commission expires .....